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The great *American Cyclopaedia of Law and Procedure* (29 Cyc. 1058) cites the maxim in its appropriate place. So does Black's *Law Dictionary*. In Mr. Spencer's textbook on suretyship (1913), at page 294, it is called "the familiar maxim, *non haec in foedera veni*." In no instance is the Vergilian authorship mentioned. Assuredly, on his couch of asphodel, the author of *Sic vos non vobis* learns of that with an indulgent smile. Yet if Papinian and Ulpian and Gaius cited Homer with the same respect as a rescript of Divi Fratres, our ermined rulers might not hesitate to give Vergil a place by the side of Coke and Blackstone, Holt and Eldon.

Non haec in foedera veni! When the familiar words suddenly appear in this unexpected context, it needs no unusual imagination to see the courtroom dissolve before our eyes. The acrimonious debates of plaintiff and defendant are blown into space with the dust of their leathery parchments. The abstract analysis of the rights of principal and surety, of obliger and obligeo, appears as futile as the chewing of dry straw. And in their place there is a superb portico, bathed in African sunlight. A somewhat too richly attired Trojan is painfully framing a decision that is not his own. And facing him, with eyes ablaze and heaving breast, the royal Phoenician is trying to remember that she is a queen as well as a deeply wronged woman.

Strange that His Lordship and their respective Honors of New York and Massachusetts could go on quietly discussing contracts and breaches, discharges and indemnities, when in their ears there must have been ringing the wild invective:

Nec tibi diva parens, generis nec Dardanus auctor!

Apparently, however, they did. I do not undertake to explain it. *Non haec in foedera veni*.

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ON XENOPHON, *Anabasis* i.4.13

Reuss (*Kritische und exegetische Bemerkungen zu Xenophons Anabasis*, p. 11) regards the words τὸ μὲν δὴ πολὺ τοῦ Ἑλληνικοῦ οὕτως ἐπέσθη as a gloss: "Mit diesen Worten werden die Verhandlungen der Hellen mit Kyros abgeschlossen, während im Folgenden erst mitgeteilt wird, wie dieselben dazu kamen, Kyros Anerbietungen anzunehmen. Der Abschluss der Beratung wird I. 4. 17 berichtet: συνέπετο δὲ καὶ τὸ ἄλλο στράτευμα αὐτῷ ἅπαν, Menons Vorgehen bestimmte das Griechenheer, den Euphrat zu überschreiten. Was mit der Berschränkung τὸ πολὺ τοῦ Ἑλληνικοῦ gesagt sein soll ist nicht zu ersehen, im Widerspruch damit steht I. 4. 17, τὸ ἄλλο στράτευμα ἅπαν. Das erst in 17 das ganze Heer zum Uebergang sich entschliesst, ergiebt auch die

Vergleichung von I. 4. 17, οἱ στρατιῶται ἐν ἐλπίσι μεγάλας ὄντες, mit Diodor. xiv. 21, οἱ μὲν οὖν στρατιῶται ταῖς ἐλπίσι μετεωρισθέντες ἐπέισθησαν ἀκουλουθεῖν."

The substance of Reuss's contention is that there is a contradiction. Xenophon begins by saying that τὸ πολὺ τοῦ Ἑλληνικοῦ was persuaded to cross by the liberal promises of Cyrus. But the subsequent narrative shows that the decisive element was the action of Menon and his troops.

The situation as described by Xenophon is as follows: At Thapsacus on the Euphrates Cyrus finally announced the objective of the expedition. This information was conveyed by the generals to the assembled soldiers; they refused to proceed without extra pay. The generals reported this demand to Cyrus. Naturally some time elapsed before Cyrus' favorable answer was communicated to a second meeting. It is during this interval that Menon, seeing an opportunity of increasing his prestige with Cyrus, assembled his own soldiers apart from the others, without waiting for the second general meeting which he knew would be held to hear the report of the generals. The two meetings were in progress at about the same time. The main body (τὸ πολὺ τοῦ Ἑλληνικοῦ), consisting of all but Menon's contingent, was persuaded to advance by Cyrus' liberal promises. Meanwhile Menon addressed his own troops and by other arguments persuaded them to cross the river. In all likelihood he knew of Cyrus' reply, but he made no reference to it in his speech. Afterward Cyrus crossed and τὸ ἄλλο στράτευμα ἅπαν followed him. There is no contradiction here. τὸ πολὺ τοῦ Ἑλληνικοῦ and τὸ ἄλλο στράτευμα ἅπαν refer to exactly the same body, the Greek division minus Menon's contingent.

The passage cited from Diodorus has no bearing on this question. The rest of the army may, as Diodorus says, have been influenced in their decision to cross by the action of Menon's contingent, but Xenophon nowhere says so. The soldiers referred to in I. 4. 17, οἱ μὲν δὲ στρατιῶται ἐν ἐλπίσι μεγάλας ὄντες κ.τ.λ., are those of Menon, not the main body. They also are referred to in I. 4. 16, τῷ στρατεύματι. To these troops after they had crossed the Euphrates Cyrus sent a message of approval coupled with a vague but attractive promise of future benefits—ὅπως δὲ καὶ ὑμεῖς ἐμέ ἐπαινέσετε ἐμοὶ μελήσει. Menon he rewarded in a more substantial way. Afterward he himself crossed and the rest of the army followed him, pursuant to their decision to accept Cyrus' offer of increased pay. There is nowhere in Xenophon's narrative even the slightest indication that their action in crossing was in any way due to the previous crossing of Menon's troops.

Xenophon's account is perhaps not as clear as it might be, but no attentive reader need fail to follow it. American editors, seeing no difficulty, make no comment. However, in view of the fact that Reuss's arguments are substantially reproduced with approval in a standard German edition (*Xenophons Anabasis erklart von Rehdantz, sechste Auflage bearbeitet von Carnuth*, 1888), a brief note would not be out of place.

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